



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2022-0721, FRL-10452-02-R10]

Air Plan Approval; AK; Adoption and Permitting Rule Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Alaska State Implementation Plan submitted on May 16, 2022, and August 11, 2022. The revisions update Alaska's adoption by reference date for Federal regulations relied upon for implementation of the air program, including permitting requirements and air pollution test methods. The revisions also add procedures for electronic submission of documents for air permits and other authorizations, update air permitting and emission fees, add additional clarifying language to the fee provisions, and specify emissions inventory reporting requirements. The EPA has determined that the submitted revisions are consistent with Clean Air Act requirements.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2022-0721. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov>, or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue (Suite 155), Seattle, WA 98101, at (206) 553-6357, or hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we” or “our” is used, it is intended to refer to the EPA.

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I. Background

Each state has a SIP containing the control measures and strategies to attain and maintain the national ambient air quality standards (NAAQS). Alaska establishes state air quality regulations in Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50 Air Quality Control (18 AAC 50) and submits these regulations for EPA approval and incorporation by reference into the Alaska SIP in the Code of Federal Regulations (CFR) at 40 CFR part 52, subpart C.

On May 16, 2022, and August 11, 2022, Alaska submitted revisions to the SIP and the EPA proposed to approve the changes on January 18, 2023 (88 FR 2873).¹ The reasons for approval are included in the proposed action and will not be restated here. The public comment period for the proposed action closed on February 17, 2023, and we received one comment in support of the action. Therefore, we are finalizing the action as proposed.

II. Final Action

The EPA is approving, and incorporating by reference, certain revisions to the Alaska SIP, submitted on May 16, 2022, and August 11, 2022, as being consistent with Clean Air Act section 110 and part C and D requirements for the permitting of major stationary sources. Upon the effective date of this final action, the Alaska SIP will include the following regulations:

¹ Alaska’s May 16, 2022, submittal also included revisions regarding ice fog and sulfur dioxide special protection areas, which are outside the scope of this action and will be addressed in a separate, future rulemaking.

- 18 AAC 50.035 Documents, Procedures and Methods Adopted by Reference, except (a)(6), (a)(9), and (b)(4), state effective April 16, 2022, which adopts by reference certain Federal test procedures and methods for determining compliance with the NAAQS;
- 18 AAC 50.040 Federal Standards Adopted by Reference, except (a), (b), (c), (d), (e), (g), (j) and (k), state effective April 16, 2022, which adopts by reference certain Federal regulations for the permitting of new or modified major stationary sources;
- 18 AAC 50.270 Electronic Submission Requirements, state effective September 7, 2022, which establishes requirements and procedures for the electronic submission of permitting forms and other documents;
- 18 AAC 50.275 Consistency of Reporting Methodologies, state effective September 7, 2022, requiring consistent methodology in reporting air emissions;
- 18 AAC 50.400 Permit Administration Fees, except (a), (b), (c), and (i), state effective September 7, 2022, which establishes permit administration fees, compliance fees, and air quality emission fees.

III. Incorporation by Reference

In this document, the EPA is finalizing regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the regulations described in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of the EPA's approval, and will be incorporated by reference by the Director of the *Federal*

Register in the next update to the SIP compilation.²

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would

² 62 FR 27968 (May 22, 1997).

be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the Clean Air Act and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of this action, it is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This

action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 13, 2023.

Casey Sixkiller,
Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Alaska

2. In § 52.70, paragraph (c), Table 1 is amended by:

- a. Revising the entries for “18 AAC 50.035”, and “18 AAC 50.040”;
- b. Adding under the table heading “18 AAC 50—Article 2. Program Administration” entries for “18 AAC 50.270” and “18 AAC 50.275” immediately after the entry for “18 AAC 50.260”; and
- c. Revising the entry for “18 AAC 50.400”.

The revisions and additions read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

Table 1 to paragraph (c) - EPA-Approved Alaska Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanations
Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50—Air Quality Control (18 AAC 50)				
18 AAC 50—Article 1. Ambient Air Quality Management				
* * * * *				
18 AAC 50.035	Documents, Procedures, and Methods Adopted by Reference	4/16/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Except (a)(6), (a)(9), and (b)(4).

18 AAC 50.040	Federal Standards Adopted by Reference	4/16/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Except (a), (b), (c), (d), (e), (g), (j) and (k).
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18 AAC 50—Article 2. Program Administration				
* * * * *				
18 AAC 50.270	Electronic Submission Requirements	9/7/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
18 AAC 50.275	Consistency of Reporting Methodologies	9/7/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
* * * * *				
18 AAC 50—Article 4. User Fees				
18 AAC 50.400	Permit Administration Fees	9/7/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Except (a), (b), (c), and (i).
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